



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION

MRA/170175

PRELIMINARY RECITALS

Pursuant to a petition filed November 17, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the St. Croix County Health & Human Services in regard to Medical Assistance, a hearing was held on December 17, 2015, at New Richmond, Wisconsin.

The issue for determination is whether the petitioner's total countable assets exceed the limit set for her medical assistance under the spousal impoverishment provisions of the program.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
St. Croix County Health & Human Services
1752 Dorset Lane
New Richmond, WI 54017-1063

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of St. Croix County.
2. The petitioner's community spouse asset share was set at \$144,503.28 retroactive to December 1, 2014, in *DHA Decision No. MRA 166000*. An earlier decision, *DHA Decision No MRA/162404*,

allowed the petitioner to transfer all her assets to her husband to generate sufficient income to meet her minimum monthly needs, but that decision incorrectly understated the amount of assets held by the couple. *DHA Decision No. MRA 166000* was issued solely to correct the earlier decision.

3. The income derived from all of the petitioner and her spouse's assets when combined with their other income falls short of meeting his minimum monthly needs.

DISCUSSION

This is the third time in a little over a year that the petitioner has filed an appeal to become eligible for institutional medical assistance. She prevailed in her first two attempts but remains ineligible. Those appeals involved the spousal impoverishment provisions of the program, which are meant to prevent an institutionalized person from falling into poverty. Medical assistance rules usually require persons considered institutionalized to "apply their available income toward the cost of their care." Wis. Admin. Code § DHS 103.07(1)(d). But both Wisconsin and federal medical assistance laws allow the institutionalized spouse to assign income and a certain amount of assets based upon their total assets to the spouse in the community. *See* Wis. Stat. § 49.455, and 42 U.S.C. § 1396. If the community spouse's income is still not enough to meet his minimum monthly needs, more assets can be assigned to create additional income, if an administrative law judge approves the transfer after an administrative hearing. Wis. Stat. § 49.455(6)(b)3 and (8)(d).

The first hearing determined that the petitioner's husband fell more than \$2,000 short of meeting his minimum monthly needs and allowed the petitioner to transfer all of her assets to him to help meet those needs. But because of a typographical error in that decision, the amount the petitioner was allowed to transfer to him was less than the actual amount of their assets. A second hearing corrected this, setting the combined amount of assets the couple could keep (after considering the \$2,000 an institutionalized person can keep even without help from the spousal impoverishment provisions) and still have petitioner to be eligible for medical assistance at \$146,503.28. The county agency contends that their assets now exceed this amount. The petitioner disagrees. The source of their disagreement is whether a second motor vehicle owned by the petitioner is a countable asset. If it is, the county contends that couple's combined assets are \$149,933.23.

I will not determine whether the second car is a countable asset. Instead, I point out that the intent of the earlier decision was to allow all of the assets to be titled in the spouse's name and still allow the petitioner to receive medical assistance. The reason for this was because even if the couple kept all of their assets, the husband's income remained well short of meeting his minimum monthly needs. Because the decision finding that his income remained so short of meeting his needs was issued in the last year, and there is no evidence that their finances have changed significantly since then, I assume this is still true. And as a practical matter, even if their assets somehow doubled, those assets probably still would not produce enough income to meet his needs. Thus, regardless of whether the second vehicle is counted, there are not enough assets for the husband to have sufficient income. Rather than determine whether the truck is exempt, acting consistent with the purpose of the spousal impoverishment provisions, I will increase the amount of the couple's assets that can be assigned to the husband to \$150,000. This new asset limit shall be retroactive to whatever date is the earliest date the petitioner can be eligible for the medical assistance benefits she seeks under her latest application.

The petitioner must transfer all of her assets so that they are titled solely in her husband's name within one year or the assets will count against her asset limit, which will leave her ineligible for medical assistance.

CONCLUSIONS OF LAW

The petitioner and her husband may allocate all of their assets to him because he requires all of those assets to produce enough income to meet his minimum monthly needs.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it increase the community spouse's asset share to \$150,000. This decision shall be retroactive to the earliest date eligibility can begin based upon the petitioner's latest application for medical assistance. .

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 27th day of January, 2016

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 27, 2016.

St. Croix County Health & Human Services
Division of Health Care Access and Accountability
Attorney [REDACTED]